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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/575,677	06/22/2000	Harold Jeffrey Goldberg	10767-0007-2	4736
26646	7590	10/31/2003	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ENG, DAVID Y	
		ART UNIT		PAPER NUMBER
		2155		9
DATE MAILED: 10/31/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/575,677	GOLDBERG ET AL.
	Examiner	Art Unit
	DAVID Y. ENG	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 August 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ . |

The substitute specification and the amendment filed on 8/25/2002 have been entered. The active claims are 1-5.

Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Details of the rejection have already been set forth in the last Office action. The details are incorporated herein by reference thereto.

In the remarks directed to the enablement rejection, Applicants stated that neither the wording of the patent statute nor the interpretations of the statute require a listing of program code. The applied statute requires Applicants to disclose their invention in the specification. Applicants' claimed invention is a program consists of processor readable instructions implementing a network status reporting level determination mechanism. The program therefore is required by the statute to be disclosed. Since the program is not disclosed in the specification, the rejection therefore is proper. The remaining question is whether the specification provides enough information to a person of ordinary skill in the art to make and use the invention without undue experimentations. The answer is no because the specification fails to disclose how to determine a level of detail to report the network status to network operations console based on at least one of user request and a predetermined allocation of bandwidth for use in reporting network status wherein regardless of the user request, the level of detail is limited to a maximal level permitted by available bandwidth as

claimed. Figure 2 merely shows several rectangular boxes labeled as daemon, manager, switches and consoles interconnected by lines. The description of Figure 2 in the specification does not provide any more information than what is already shown in Figure 2. A skilled programmer would not be able to transform the hardware connections shown in Figure 2 to instructions when executed would control a processor to operate in a manner as claimed.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pendleton in view of Kavner.

In the communication filed on 8/25/2003, Applicants agree on the Examiner's interpretation of the Pendleton reference. Applicants amended the independent claims to incorporate the limitation that the level of detail of the status report is limited by maximum available bandwidth. Applicants contend that neither the Pendleton reference nor the Kavnor reference teach the newly inserted limitation. The Examiner disagrees. It is well known fact and one of ordinary skill in the art should readily recognize that the output of a machine could not be larger than its designed capacity. The newly inserted limitation is nothing more than stating a well-known fact.

The Pendleton reference teaches reporting and transmitting network status in various levels of details. Kavner teaches pre-allocation of sufficient bandwidth for transmitting message stream the pre-allocated bandwidth limiting the level of details. The combined teaching of the applied references meet all the claim limitations.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



DAVID Y. ENG
PRIMARY EXAMINER